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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 300

ROBERT H. REDDICK, M.D.,

Petitioner,

vs.

STATE OF MARYLAND, EX REL. C. FERDINAND SYBERT, ATTORNEY GENERAL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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Robert H. Reddick, M.D., prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the above entitled case on April 9, 1957, and upon which judgment the Court of Appeals of Maryland ruled against a Motion for Reargument on the 9th day of May, 1957.

CITATION TO OPINION BELOW

The opinion in the Court of Appeals of Maryland has been printed on May 4, 1957, Atlantic Reporter Periodical, page 762. The opinion in the Court of Appeals appears in Atl. 2d , and is also printed in an Appendix hereto.

JURISDICTION

Judgment of the Maryland Court of Appeals was entered on April 9, 1957 (R. 617, 631). Rehearing, which was timely applied for, was denied on May 9, 1957 (R. 632, 635, 637).

The Jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), since Petitioner claims that he has been denied a right set up under the Constitution of the United States.

QUESTIONS PRESENTED

1. Did the Petitioner's Board of Medical Examiners, representing the Maryland State Homeopathic Medical Society, a private organization legally constituted under the laws of the State of Maryland, and duly selected and elected under the provisions of Article 43, Sections 117 and 118, of the Code of Public General Laws, at the 1956 Annual Meeting of said Society, comprise a body entitled to the "equal protection of the laws" under the 14th Amendment of the Constitution of the United States?

> "* * * nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."
>
> 1st Section, 14th Amendment, Constitution of the United States.

LAW REGULATING THE PRACTICE OF MEDICINE IN MARYLAND AS CODIFIED IN THE CODE OF PUBLIC GENERAL LAWS OF MARYLAND (1939 EDITION AND 1947 SUPPLEMENT), ARTICLE 43, AND INCLUDING LAWS ENACTED BY THE GENERAL ASSEMBLY AT ITS 1949 SESSION, SECTIONS 117 AND 118.

TITLE "HEALTH"

PRACTITIONERS OF MEDICINE.

* * * * * *

"117. From and after the first Tuesday in June, eighteen hundred and ninety-two, there shall be and continue to be two separate boards of medical examiners for the State of Maryland — one representing the Medical and Chirurgical Faculty of the State of Maryland, and one representing the Maryland State Homeopathic Medical Society of the State of Maryland. The members of said respective boards in office on the eleventh day of April, 1902, shall continue to hold and exercise their respective offices up to the first Tuesday in June nineteen hundred and two. On the first Tuesday in June, nineteen hundred and two, said boards of medical examiners shall be reorganized, and thereafter said boards shall be constituted as follows: Each of said boards shall consist of eight members, who shall be selected by the Medical and Chirurgical Faculty of the State of Maryland and the Maryland State Homeopathic Medical Society, respectively, at the annual meetings of said respective societies; and each appointee is immediately after his election to be furnished with a certificate thereof by the society electing him. Each such member of said respective boards, except those elected in the year nineteen hundred and two, shall serve for four years, or until his successor is appointed and qualified. At their respective annual meetings held in the year nineteen hundred and two, each of said aforementioned societies shall elect the full number of eight examiners for its respective board, of whom two shall be elected for four years, two for three years, two for two years, and two for one year, and thereafter two examiners shall be elected by each so-

ciety in each year, as hereinbefore provided, to serve for a term of four years, or until their successors are appointed and qualified, the outgoing members to be eligible for re-election. The terms of office of all members so elected shall begin on the first Tuesday in June, in the year in which they shall be respectively elected; each board is to have the exclusive right to examine, pass upon the qualifications of and license its own applicants. The examiners shall be physicians actually engaged in the practice of medicine or surgery, in the State of Maryland, and of recognized ability and honor. (No member of any medical college or university, who passes upon the qualifications of graduates of any medical school shall be eligible to serve as a member of either of said boards.) In case of a vacancy occurring in either of said boards, the board in which such vacancy shall occur shall fill the same until the next annual meeting of the Medical and Chirurgical Faculty, or the Maryland State Homeopathic Medical Society, according as the board in question may be the representative of one or other of said societies, when said society shall elect an examiner to serve for the remainder of such unexpired term.

"118. Each of said boards shall, at its meeting on the first Tuesday in June of each year, appoint a secretary-treasurer for the board, whose term of office shall last for one year, and who shall be eligible for re-appointment, and whose duties shall be as follows: Within sixty days from the time of his appointment by his respective board, it shall be the duty of the clerk of the circuit court of Baltimore city and the clerk of the circuit court of each county in the State to furnish the secretary-treasurer of each board a list of all physicians who have been legally registered in such court. To all those physicians who have at that time been practicing in the State without having been legally registered said secretary-treasurer shall send a printed notice of the section of this article relating to the duty of the police commissioner in Baltimore city and the sheriffs of the counties of the State under this law. Within

four months of the time of his appointment he shall see that all physicians entitled to register have been registered, and that the names of all those who are not entitled to be registered under this sub-title have been presented for prosecution to the State's Attorney of the City of Baltimore, and of each county in the State in which the accused, respectively, reside. Those physicians, who, being entitled to register under this sub-title, yet have failed to comply at the expiration of this time — four months from the election of the secretary-treasurer of the board — shall also be prosecuted, and no one after the eleventh day of April 1902, shall be allowed to practice medicine or surgery without being duly registered according to the provisions of this sub-title. The secretary-treasurer shall keep the official records of the board for which he is secretary, as provided for in section 119 of this sub-title, the examination papers of applicants for at least three years, after they have been passed upon by the board, after which they are to be destroyed, and a complete list of all registered physicians in the entire State. He shall call to the attention of the State's Attorneys of Baltimore city and of the different counties throughout the State all violations of the law under this sub-title. He shall collect and hold all moneys belonging to the board, for which he shall give bond to the State of Maryland in the sum of $1,000, the same to be held by the president of the board. He shall receive from the income of the board such salary as his respective board may determine."

2. Did the acts of the Attorney General of Maryland, in combination with a group of five ousted former members of the Maryland State Homeopathic Society to form a so-called board of medical examiners recognized solely by himself and in direct contra-distinction to the unanimously expressed wishes of the active members in good standing, present and voting at the annual meeting of said Society on April 8, 1956, constitute a lawful and legal substitution, not in conflict with the franchise right and property rights

afforded the Petitioner's Board under the 14th Amendment of the Constitution of the United States, guaranteeing to citizens the "equal protection of the laws" in addition to guarantees of the privilege of "due process of law"; and would the violation of such property rights, should they be found to exist by this Honorable Court, constitute a reason for the Granting of the Writ of Certiorari?

1st Section, 14th Amendment, Constitution of the United States.

3. In view of the provisions of Article IV, Section 1, of the Federal Constitution, would the activities of the Attorney General of any State, in attempting, through the officials of his own Department, to set standards upon the academic qualifications of medical students of Sister-States (eg., the Sovereign State of California), constitute, in the Judicial Eyes of this Honorable Court, an unlawful interference of such a judicial character as to hinge, indirectly, upon a violation of "Full Faith and Credit" rightfully to be accorded any sovereignty under such circumstances?

1st Section, Article IV, Constitution of the United States, provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof."

For Example: The Laws of the State of California, in their General Provisions, as approved June 15, 1937, Chapter 399, Statutes of 1937, accords reciprocity of medical Licensure to the Licentiates of both Boards of the State of Maryland; and under the Provisions of the Code of Public General Laws of Maryland (1939 Edition and 1947

Supplement), Article 43, Section 121, each of the two Maryland Boards of Medical Examiners accords reciprocity to the composite California State Board of Medical Examiners, would not this, if violated by an instrumentality of either of the respective State Governments, give rise to a situation calling for adjudication by this Honorable Court?

See:

Chapter 399, Statutes of 1937, Pub. Gen. Laws of California;

Art. 43, Section 121 and Article 43, Sections 117 and 118, of the Code of Public General Laws of Md.

The constitutionality of the earlier California medical practice acts was construed in various decisions, i.e.:

Act of 1876, as amended in 1878, was construed in Ex Parte Frazer, 54 Cal. 94; Ex Parte R. D. Johnson, 62 Cal. 263; People v. Lee Wah, 71 Cal. 80; Ex Parte McNulty, 77 Cal. 164; People v. Bee Doo Hong, 122 Cal. 606.

Act of 1901 was construed in Ex Parte G. B. Gerine, 143 Cal. 412; Hewitt v. The Board, 148 Cal. 590.

The Act of 1876, as amended in 1878, is constitutional: Ex Parte Frazer, 54 Cal. 94; Ex Parte R. D. Johnson, 62 Cal. 263.

The constitutionality of the Maryland Medical Practice Act was upheld by the Federal District Court, Hitchcock, et al. v. Collenburg, et al., 140 F. Supp. 894 (Md. 1956).

4. Does this Honorable Court sanction and approve the arbitrary and capricious acts of an Attorney General which restrain one of two Boards existing under the Laws of the State of Maryland; and would such activities of an Attorney General, although upheld by decision of the Court of Appeals of Maryland, in granting recognition to a Board cre-

ated by himself under such circumstances, generate a condition which borders upon a monopoly in violation of the Sherman Anti-Trust Laws, giving rise to Jurisdiction in the Supreme Court of these United States?

Sections 1 and 2 of the Sherman Anti-Trust Act, Act of July 2, 1890, Chapter 647, Sections 1 and 2, 26 Stat. 209. 15 U.S.C. 1 and 2.

See also:

Report of the Attorney General's National Committee to Study the Anti-Trust Laws, published March 31, 1955.

In the Attorney General's Report at page 43, it is stated:

"Monopolizing under Section 2 consists of monopoly in the economic sense * * * that is power to fix prices or to exclude competition * * * plus a carefully limited ingredient of purpose to use or preserve such power."

Under the heading "Predatory Preclusive Practices", the Attorney General's Report at pages 327-328, states:

"There should be no predatory preclusive tactics, such that their natural effect would be to enable the user to eliminate rivals without regard to their efficiency, or at least, to place them under serious handicap, irrelevant to their efficiency. It would be noted as a practical matter that predatory competition in this sense can usually only be waged where a considerable degree of market power already exists, or where an attempt is being made to use a long purse in order to destroy or coerce rivals. Such conduct is regarded therefore as symptomatic either of monopoly or the intent to monopolize, or both."

The Supreme Court has held that organized medicine in restraint of trade was a monopoly in violation of the Sherman Act.

See:

United States v. American Medical Association, 317 U. S. 519, 526 (1943).

5. In the current situation presented by the instant case, wherein the Attorney General of the State takes it upon himself to be a party to a litigation, allegedly contrary to the express provisions of Article 5, Section 3, of the Constitution of the State of Maryland, would belated approval by the Governor of the State of such an act, and the subsequent judicial validation of such an act by the Court of Appeals constitute, in the eyes of this Honorable Court, a violation of Article 2, Section 10, of the United States Constitution expressly forbidding state governments from making ex post facto laws or laws impairing the obligation of contracts, and violation of the 14th Amendment to the Constitution of the United States which guarantees to citizens in all stations of life the equal protection of the Laws?

> "No State shall * * * pass any * * * law impairing the obligation of Contract, * * *".
>
> Article 2, Section 10, Constitution of the United States.

> "No State shall make or enforce any law which shall * * * deny to any person within its jurisdiction the equal protection of the laws."
>
> Article 14, Section 1, Amendment to the Constitution of the United States.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Sections 1 and 2 of the Sherman Anti-Trust Act, Act of July 2, 1890, Chapter 647, Sections 1 and 2, 26 Stat. 209, 15 U.S.C. 1 and 2.

The relevant portions of these sections are as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal.

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person, to monopolize any part of the trade or commerce among the several states, or with foreign nations shall be deemed guilty of a misdemeanor. * * *"

Sections 1 and 2 are set forth verbatim in the Appendix attached to this Brief. See Appendix, pages 46-47.

2. Section 1 of the 14th Amendment of the Constitution of the United States, which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Section 1 of the 4th Article of the Constitution of the United States, which provides:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof."

3. Section 3 of the 5th Article of the Constitution of the State of Maryland, which provides:

"It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, * * * and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended * * *."

Article 23, Declaration of Rights, of the Constitution of the State of Maryland, which provides:

"That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or out-

lawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land."

Article 2, Section 9, of the Constitution of the State of Maryland, which provides:

"He shall take care that the Laws are faithfully executed."

Article 23, Declaration of Rights, of the Constitution of the State of Maryland, Article 2, Section 9, of the Constitution of the State of Maryland, and Section 3 of Article 5 of the Constitution of Maryland are set forth verbatim in the Appendix attached to this Brief. See Appendix, pages 47-48.

STATEMENT

The Maryland State Homeopathic Medical Society came into existence in 1875 and has never been incorporated (E. 498). Between 1951 and 1954, the Society and the Board were inactive, the last previous meeting of the Society having been held on May 10, 1950 and the last previous meeting of the Board having been held on June 15, 1951. On May 23, 1954, a group of homeopathic physicians, including some members of the old Society, held a reorganization meeting and elected the following members of the Board of Medical Examiners for terms expiring as follows:

Dr. Raymond B. Croissant, 1956,
Dr. Edward J. Simon, 1956,
Dr. Robert A. Follweiler, 1957,
Dr. William C. Harrison, 1957,
Dr. John A. Swartwout, 1958,
Dr. Joseph H. Watson, 1958,
Dr. Robert H. Reddick, 1959,
Dr. Julius Chepko, 1959 (E. 223, 95).

Dr. Julius Chepko was elected President and Dr. Robert H. Reddick was elected Secretary-Treasurer of both the Society and the Board (E. 223). Governor McKeldin was notified about the election of the Board of Medical Examiners (E. 479), the Governor acknowledged the election (E. 479) and the Board members were listed in the Maryland Manual (E. 480). In January, 1955, the Hall of Records of Maryland delivered to Dr. Robert H. Reddick as Secretary various records of the Board and Society, including the Constitution and By-Laws of the Society (E. 440, 461, 544). This was accepted by the Society, recognized by it and was the only Constitution and By-Laws under which the Society operated after 1954 (E. 461, 462). On April 12, 1955, the 80th annual meeting of the Society was held, the minutes of the 1954 meeting were approved, it was resolved that the officers of the Society and members of the Board of Medical Examiners continue in office until 1956 and it was decided to hold the 1956 meeting in Baltimore during the month of April (E. 235). On Sunday, October 16, 1955, the Board met and ordered the issuance of a reciprocity license to practice medicine in Maryland to Dr. Milan D. Chepko, upon the representation of the Board's President, Dr. Julius Chepko, that he was fully cognizant of his brother's past and present life and personally guaranteed his character, integrity, dependability, etc. (E. 470). Thereafter, it was learned that said Dr. Milan D. Chepko had been convicted of a narcotics violation and had been sentenced to two years' imprisonment at Lexington, Kentucky, beginning November 10, 1953, that he was released from prison on August 27, 1954 and discharged from parole on November 9, 1955 (E. 283, 284). Dr. Julius Chepko testified that he did not know that his brother had been convicted or imprisoned, despite his admission that he sent a letter to the Parole Board while his brother was still at

Lexington (E. 104, 107). After Dr. Reddick discovered the aforesaid conviction, he sent a telegram to Dr. Julius Chepko on March 9, 1956 expelling him from the Society and the Board (E. 70) in accordance with the authority vested in the Secretary by the Society's By-Laws (E. 547). This action was later approved by the membership at its 81st annual meeting on April 8, 1956 (E. 246, 247). In the meantime, Dr. Swartwout resigned from the Board on February 3, 1956 (E. 65, 66). Dr. Chepko sent notices to the members on February 29, 1956 (E. 67) of a Board meeting to be held on Sunday, March 11, 1956, but he did not hold the meeting (E. 68). A Board meeting was then scheduled to be held on April 5, 1956, but this meeting was deferred at the request of the Attorney General (E. 71). Instead, a meeting of the Board was held in the Attorney General's Office on April 4, 1956, of which Dr. Reddick received notice at 6:00 P.M. on April 3, 1956. He was unable to attend and the Attorney General was so advised (E. 76). At said meeting of April 4, 1956, Dr. Swartwout was one of the five members who attended and participated in the discussion (E. 76) although he had resigned on February 3, 1956. A resolution was passed removing Dr. Reddick as Secretary-Treasurer of the Board and electing Dr. Edward J. Simon to fill the vacancy (E. 77). The minutes of said meeting also show that the members were informed that a meeting of the Society was scheduled to be held on Sunday, April 8, 1956 at the Emerson Hotel in Baltimore (E. 78). The Attorney General advised that the meeting should not be convened on a Sunday (despite the many previous Sunday meetings) and it was decided that the meeting of the Society should therefore be postponed and Dr. Reddick be so notified (E. 78). Dr. Reddick testified that he had never received any such notice (E. 497). No evidence was produced to show that such notice had ever

been given. On April 7, 1956, Dr. Reddick sent a telegram to Dr. Julius Chepko to appear before the Society meeting on April 8, 1956 to answer charges against him (E. 109, 110), but he did not appear. On April 8, 1956, the 81st annual meeting of the Society was held. At said meeting, the Constitution and By-Laws which had been obtained from the Hall of Records were re-affirmed (E. 246). The minutes of the 1955 meeting were approved. Drs. Chepko, Simon and Follweiler were expelled as members of the Board (E. 247). Drs. Marcos Jiminez. Robert Dwight Brown, Lloyd W. Hughes, Simon Virkutis, Alexander Mozzer and Yuen K. Yuan were elected as new members of the Board of Medical Examiners, with Dr. William C. Harrison and Dr. Robert H. Reddick remaining as hold-over members (E. 250). Dr. Simon Virkutis was elected President and Dr. Robert H. Reddick was re-elected Secretary-Treasurer (E. 249). An executive committee was formed to conduct urgent business (E. 251). Thereafter; the members of the Board headed by Dr. Chepko filed a "Petition for Writ of Mandamus and Injunction" against Dr. Reddick and other Board members in one action without designating whether it was supposed to be on the equity side for the injunction or on the law side for the mandamus. After three days of testimony, the action was terminated without a court decision upon the stipulation in open court, approved by the Court, on May 31, 1956, that Dr. Reddick turn over his records to Dr. Simon pending the decision of the Society as to who shall be the proper and legal Secretary of the Board (E. 477-479). In pursuance of this stipulation, Dr. Reddick signed three papers, resigning as Secretary-Treasurer of the Society, member of the Board and Secretary-Treasurer of the Board (E. 89, 90, 91). These resignations were never delivered to the Society (E. 463). On June 2, 1956, a meeting of the Society was held at which

the purported resignations of Dr. Reddick were rejected and he was elected Secretary and Treasurer of the Society and a member of the Board of Medical Examiners and the Board was directed to elect Dr. Reddick as its Secretary-Treasurer (E. 462, 463).

On June 4, 1956, Dr. Chepko met with two other members of his group as a Board of Medical Examiners (E. 94) at which meeting Dr. Reddick's resignation as a member of the Board and Secretary-Treasurer thereof were accepted and Dr. Edward Simon was elected Secretary-Treasurer of the Board (E. 96, 97). This was not only repugnant to the directions of the Society made at its meeting of June 2, 1956, but it could only be effective for one day, for the new Board took office on June 5, 1956 in accordance with the provisions of Article 43, Section 118. (The Appellees have pointed out that there is a printer's error in the 1951 Code in that the terms of office of members of the Board elected by the Society "shall begin on the first *Tuesday* in June" instead of the "first *day* in June" as reported in said Code.)

On June 5, 1956, the Board of Medical Examiners elected by the Society on April 8, 1956 met (E. 472), as directed by Article 43, Section 120, for the purpose of re-organization, to elect a President and to appoint a Secretary-Treasurer. Dr. Reddick was appointed Secretary-Treasurer, Dr. Simon Virkuitis was elected President from June 5,1956 to June 27, 1956 and Dr. Robert Dwight Brown was elected President to serve from June 27, 1956 until the next annual meeting (E. 472, 473).

On June 26, 1956, the Attorney General filed the declaratory judgment and injunction suit against Dr. Reddick and the members of his Medical Board. On June 27, 1956, the Attorney General filed suit against the officers of the Society asking the Court to declare that the Society has no

legal right to hold examinations and to enjoin the holding of such examinations. Demurrers and motions to dismiss were overruled and after the taking of testimony, the lower Court granted the relief prayed and these appeals were taken from the lower Court's decrees.

OPINION OF THE COURT OF APPEALS

The opinion filed by the Court of Appeals is printed in an appendix hereto. It states the question decided by the Court as follows:

> "The appellant further contends the Attorney General was not a proper party to this suit and had no authority to institute the same. Art. V, Sec. 3, of the Maryland Constitution reads, in part, as follows:
>
> > 'It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, * * * and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor acting according to law, shall direct to be commenced, prosecuted or defended * * *.'
>
> When the suits were filed, the Attorney General had no directive from the Governor or the Assembly to commence or prosecute the same; but shortly thereafter, he received a written directive from the Governor to prosecute the 'cases to conclusion'. The appellee claims, (1) that as the Attorney General of the State, he has the right and the duty to institute and prosecute all proper suits for and on behalf of the State, without any request from the Governor or the Assembly, that the above section of the Constitution does not limit his powers, but compels him to commence, prosecute, or defend actions when directed to do so by the Governor or the Assembly; and, (2) that if he be wrong as to (1), he had the right and the duty to prosecute the suits after obtaining the above mentioned directive

> of the Governor. We find it unnecessary to rule upon (1) as we agree with (2). If we assume without deciding that the Attorney General had no authority to commence the actions without the Governor's or the Assembly's command, we think the Governor's subsequent written directive to prosecute the suits was a sufficient confirmation and ratification of the Attorney General's action in instituting the suits; and, together, they constituted a compliance wit' Section 3 of Article 5 of the Maryland Constitution. We, therefore, hold the State of Maryland, upon relation of the Attorney General, was properly a party in both of the suits."

It is quite apparent from the opinion of the Court that the Attorney General was powerless to institute and prosecute these suits against the Petitioner; and that as such, the initial action was contrary to law, contrary to the Constitution of the State of Maryland and comprised a transgression of the public policy of the State of Maryland as declared by the General Assembly, having not been directed, at the commencement of the suits, to make himself a party, or to make the State of Maryland a party.

The intervention of the Attorney General in taking sides in an internal dispute within the Board of Medical Examiners of the State of Maryland representing the Maryland State Homeopathic Medical Society by improperly, arbitrarily, and unreasonably making himself a party to a Court action which should have been litigated between the real contesting parties deprived the Petitioner of valuable property rights "without due process of law" and denied the Petitioner his right to the "equal protection of the laws" as are guaranteed by the first Section of the 14th Amendment to the Constitution of the United States; and which rights of the Petitioner are further protected under the provisions of Article 23, of the Declaration of Rights enumerated in the Constitution of Maryland.

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

1st Section, 14th Amendment, Constitution of the United States.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the Law of the Land".

Article 23, Declaration of Rights, Constitution of Maryland.

The opinion filed by the Court of Appeals of Maryland expressly manifests that "When the suits were filed, the Attorney General had no directive from the Governor or the Assembly to commence or prosecute" the cases; and this fact is a matter of Record (R. 626).

The Court's judicial sanction of the Governor's directive to the Attorney General was equivalent to unconstitutional encroachment upon the legislative powers reserved to the General Assembly by Article 5, Section 3, of the Maryland Constitution, and was tantamount to a denial of the "equal protection of the laws" in violation of Article 14, Section 1, of the Constitution of the United States.

Certainly the Court of Appeals of Maryland, under the recognized judicial decisions of that State, cannot legislate, cannot make laws, but has only the power to give interpretation to the Laws, Statutes, and Constitution of Maryland; anything further would be an encroachment upon legislative powers. All people, including the Petitioner, should have the right to stand on an equal footing before the bar

of justice in a Court of Law because the express purpose of the Fourteenth Amendment is to prevent partiality and favoritism and to supply evenly "apportioned liberty to the people."

"The equal protection of Laws is a pledge of the protection of equal Laws".

State of Missouri, ex rel Gaines v. Canada (1938), 59 S. Ct. 232, Certiorari granted, 59 S. Ct. 65, 305 U. S. 580;

Skinner v. State of Oklahoma, ex rel Williams (1942), Certiorari granted, 62 S. Ct. 488, 315 U. S. 789;

Chambers v. State of Florida, Certiorari granted, 1940, 60 S. Ct. 127, 308 U. S. 541.

"Courts cannot modify or restrict the plain terms of a statute to meet the exigencies of a particular case."

Cummings v. Wildman, 116 Md. 307.

"It is the Court's duty to interpret and not to make the Laws."

Leser v. Garnet, 139 Md. 46, Affirmed, 1922, 42 S. Ct. 217, 258 U. S. 130.

"Court of Appeals cannot create a remedy where none exists, its functions being to discover and apply existing Law."

Keane v. State, 164 Md. 685.

REASONS FOR GRANTING THE WRIT

1. The Petitioner submits that the judgment of the lower Court is in direct conflict with the constitutional limitations placed upon the office of the Attorney General by Article V, Section 3 of the Maryland Constitution, which, in part, reads:

"It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, * * * and he shall commence and prosecute or defend

any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended * * *."

2. The Petitioner submits that the judgment of the lower Court is in violation of the 14th Amendment of the Constitution of the United States in that it deprives him of valuable property rights "without due process of law" and deprives him of the "equal protection of the laws".

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

1st Section, 14th Amendment, Constitution of the United States.

3. The Petitioner submits that the activities of the Attorney General in violation of the Constitution of Maryland could not be made valid and legal by a "Directive from the Governor" which directive, in effect, also violates Article 9 of the Declaration of Rights, of the Constitution of Maryland, providing:

"That no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed."

Article 9, Declaration of Rights, Constitution of Maryland.

And which Directive of the Governor of the State of Maryland to the Attorney General also violates Article 2, Section 9, calling for the faithful execution of the Laws by the Executive Department, and reads as follows:

"He shall take care that the Laws are faithfully executed."

Article 2, Section 9, Constitution of Maryland.

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government from the highest to the lowest are creatures of the law and are bound to obey it."

United States v. Lee, 106 U. S. 196.

4. The Petitioner submits that the judgment of the lower court in upholding the acts of the Attorney General was equivalent to the abrogation of a contract right granted by legislative enactment (Article 43, Sections 117, 118, etc. of the Code of Public General Laws of Maryland), 1939 Ed. and 1947 Supp., and has enjoyed the Constitutional protection of this Honorable Court since 1769.

Dartmouth College v. Woodward, 4 Wheat. 518,

holding that such a basic contractual right, protected by the Constitution, cannot by legislation or otherwise be unconstitutionally impaired.

CONCLUSION

The Supreme Court of the United States should take cognizance of this matter by way of Certiorari because this is actually a contest in the world of medicine involving the right of Homeopathic practitioners to compete with Allopathic practitioners upon an equal basis under the Law. Historically, homeopathy can trace its origins back to Hippocates, in whose writings we find that great reliance was placed upon the "vis medicatrix naturae" — the healing power of nature, and the concept that nature heals, the physician assists. Hippocrates was credited with observations which might well have culminated in genuine homeopathic practice; among them was the cardinal doctrine of Homeopathy: Similia similibus curantur — "like cures like." The same doctrine was taught by Paracelsus and by

the alchemists among the Arabian physicians. But Samuel Christian Friedrich Hahnemann, who was born at Meissen, Saxony, in 1755, was the first to elaborate the law of similars into a distinct system of medicine and to promulgate it to the world. The medical men of his day pursued the "rule of contraries" established by Galen; that is, they administered the drug whose effect they believed to be exactly opposite to the effect of the disease for which it was given. Setting this aside, Hahnemann affirmed "the law of similars"; namely, that the medicine which would cause a certain morbific action in an otherwise healthy human being, was the specific remedy for the disease of similar character. With a large therapeutic armamentarium at his disposal, a homeopathic practitioner is enabled to choose and apply the remedy or remedies best suited to the exact requirements of the individual patient.

Many of the states of the United States and numerous foreign countries provide for the licensing of homeopathic physicians. The homeopathic system of healing is defined in Webster's Dictionary. It is recognized by Act of Congress. Practitioners of the homeopathic system maintain professional societies and schools for the teaching of undergraduate students and physicians; they also publish journals, books, periodicals and treatises. Writing in the "Journal of the American Institute of Homeopathy", C. A. Harkness, M.D., F. A. C. S. (Fellow of the American College of Surgeons) says:

> "Homeopathy has never been one of the Cults. The graduates from its schools have been on an equal footing legally with those from any medical college, and they have enjoyed all the rights and privileges granted by State Legislatures to all medical graduates. We have not had to resort to subsidizing or chicanery to secure these rights. They were given to us as part of the great medical profession. The homeopathic profession

has always been at the head in demanding that the highest standards be required of those who desire to treat the sick."

Dr. Harkness also noted that the American Institute of Homeopathy, at or about the time of its organization in 1844, adopted the rule that to become a member "one should be trained in all that was known in the best of the medical schools, *and in addition* should pass an examination in Homeopathy."

It is obviously unfair and unreasonable to require that homeopathic physicians desiring to practice homeopathic medicine and surgery in Maryland be examined by an Allopathic Medical Board of Examiners composed solely and entirely of Allopathic doctors. Such legislative Acts have been held to be unconstitutional and void. An enlightening discussion of this situation can be found in *State v. Biggs*, 46 S. E. 401. It is said by the Supreme Court of North Carolina (l.c. 403):

"Those not allopathic M.D.'s contend that the allopathic system of practice is contrary to the discoveries of science and injurious to the public. Some allopathic M.D.'s doubtless believe that all treatment of disease, except by their own system, is quackery. Is this point to be decided by the allopathic M.D.'s themselves, through an examining committee of five of their own number, or is the public the tribunal to decide, by employing whom each man prefers, whether allopath, homeopath, osteopath, or the defendant? The law says that the allopathic M.D.'s may examine and certify whether an applicant is competent to be one of their number, and no one can practice allopathic medicine and surgery without it; but they cannot decide for mankind that their own system is now and ever shall be the only correct one, and that all others are to be repressed by the strong arm of the law. This act admits Christian Scientists to practice to cure diseases without such examination. By what process of reasoning can

massage, baths and the defendant be excluded? In the cure of bodies as in the cure of souls, orthodoxy is my doxy, heterodoxy is the other man's doxy, as Bishop Warburton well says. This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall use. If he gets improper treatment for children or others under his care, whereby they are injured, he is liable to punishment; but whether it was proper treatment or not is a matter of fact, to be settled by a jury of his peers, and not a matter of law, to be decided by a judge, nor prescribed beforehand by an act of the Legislature."

Again, the Court said (l.c. 404):

"The effect would be to prohibit to those who wish it those cheap and simple remedies, and deprive those who practice them of *their humble gains*, by either giving a monopoly of such remedies to those who have the title allopathic M.D., or prohibiting the use of such remedies altogether, neither of which results the Legislature could have contemplated, and both of which are forbidden by the provisions of the Constitution which have been cited."

The opinion ends with the following language (l.c. 405):

"All the law so far has done or can do is to require that those practicing on the sick with knife and drugs shall be examined and found competent by those 'of like faith and order.' * * * There have been many cases in the reports wherein it was sought to obtain monopolies in the practice and dispensing of medicines for the allopathic M.D.'s. It is a matter of common knowledge that they have fought the chiropractors, the osteopaths, the Christian Scientists, the naturopaths, and every cult who ever claimed that they could help or cure the sick."

This was done in the State of Illinois, as shown by the report in the case of People v. Love (1921), 131 N. E. 809, 298 Ill. 304.

WHEREFORE: Petitioner prays that a Writ of Certiorari issue under Seal of this Honorable Court directed to the Court of Appeals of Maryland commanding said Court to certify and send to this Honorable Court a full and complete transcript of the record and of the proceedings had in this case to the end that the Order in so far as appealed from by the Petitioner be reviewed and determined by this Honorable Court as provided for by the Statutes of the United States; modification of the Order of the Court of Appeals of Maryland to the extent of directing that the Petition for Writ of Certiorari Issue; and for such other, further, and equitable relief as this Honorable Court may deem just and proper in the premises.

Respectfully submitted,

MORGAN L. AMAIMO,
1800 Tower Building,
Baltimore 2, Maryland,
Attorney for Petitioner.

APPENDIX

In The

Court of Appeals of Maryland

October Term, 1956

No. 146

ROBERT H. REDDICK, M.D.,

Appellant,

versus

STATE OF MARYLAND, ex rel C. FERDINAND SYBERT, Attorney General,

Appellee.

Two Appeals from the Circuit Court of Baltimore City (Joseph R. Byrnes, Judge)

Decided April 9, 1957

Before Brune, C.J., and Collins, Henderson, Hammond, and Prescott, JJ.

John J. O'Conor, Jr., Baltimore, for Appellant; Norman P. Ramsey, Deputy Atty. Gen. (C. Ferdinand Sybert, Atty. Gen., and James H. Norris, Jr., Asst. Atty. Gen., on the brief), for appellee.

STEDMAN PRESCOTT, Judge.

A bill for declaratory decree and injunction was filed on June 26, 1956, by the State of Maryland on relation of the Attorney General against Drs. Robert H. Reddick, Marcos

Jiminez, Robert Dwight Brown, Lloyd W. Hughes, Simon Virkutis, Alexander Mozzer, Yuen K. Yuan, and William C. Harrison, who were purporting to act as the Board of Medical Examiners of the State of Maryland (Board), representing the Maryland State Homeopathic Society. A temporary injunction was issued thereon by an order of Judge Oppenheimer of the Supreme Bench of Baltimore City. The next day, a companion case was filed against those who held themselves out as the officers of the Maryland State Homeopathic Medical Society (Society). The temporary injunction was extended, after a hearing on July 3, 1956, until the final determination of the case. The appellant filed combined demurrers and answers and the cases were heard before Judge Byrnes. After a prolonged hearing, the Judge rendered his opinion and signed a decree in each case. In the suit against the Board, the decree permanently enjoined the defendants from acting as the Board of Medical Examiners (Homeopathic), and from conducting, continuing to conduct and completing any examination under the purported authority of such Board, and they were further prohibited from issuing any licenses that would authorize the practice of medicine or surgery under the purported authority of said Board. The decree, also, enjoined Reddick from acting or purporting to act as Secretary-Treasurer of said Board. In the suit against the Society, Dr. Virkutis, President, and Reddick, Secretary-Treasurer, were enjoined from acting as officers of the Society to give examinations "allegedly qualifying persons to practice medicine" in Maryland, and from affixing the Society's Seal to any such license.

The Record Extract contains 551 pages, but it will be unnecessary to make this opinion correspondingly lengthy. For some years before, and at, the turn of the century there had been and was a division of opinion among the respectable members of the medical profession. One faction favored the practice of homeopathic medicine and the other group preferred the allopathic treatment of human illness. As a result, the legislature in 1902 (Art. 43, Sec. 118) named two separate and independent licensing boards with authority to issue licenses to practice medicine in this State.

The board that represented the allopathic point of view was to be designated by the Medical and Chirurgical Faculty of the State of Maryland, and the one that represented the homeopathic viewpoint was to be selected by the Maryland State Homeopathic Medical Society. With the course of time and the commendable and universally recognized advances in medical science, the allopathic group became dominant in membership, and the homeopathic following dwindled in size and in activities. By the years 1948, 1949, and 1950, the latter had become more or less moribund, and there were few, if any, candidates for examination. In 1951, Dr. Evans, a distinguished physician, who was both Secretary of, and a vital force in, the Society, died. For a time, this seems to have been the death knell of the Society. There is no record of its holding any meeting, after one that was held on May 10, 1950, the last one attended by Dr. Evans, until May 23, 1954, when the Society met for its 79th annual meeting. Just a few months prior thereto, in January 1954, Dr. Evans' daughter had turned over, with the authority of the remaining members of the Board, all of its records to the Hall of Records. She retained, however, the minute books and the constitution and by-laws of the Society.

The record does not disclose with certainty just when Reddick conceived his nefarious scheme, which now will unfold quickly, but at this "reorganization and rejuvenation" of the Society held on May 23, 1954, he was most active and succeeded in being elected to the office of Secretary of the Society; as well as one of the eight members of the Board. It was at this meeting that the group, claimed by the Attorney General to be the legally constituted Board (subject to resignations, *et cetera*), was elected. At the Society's annual meeting of 1955, held in Washington, D. C., a resolution was passed "that the officers of the Society and the Board * * * continue in office until 1956 * * *".

In due course, the Board scheduled examinations for qualified applicants for licensure on December 12th, 13th and 14th of 1955. Reddick, in the meantime, had shown an unusual interest in establishing the qualifications of the

graduates of two schools for taking the examination, although he had received competent advice that neither of the two schools was accredited by any authoritative body, and their graduates could not lawfully qualify for the examinations. Reddick, however, without the knowledge or consent of the other Board members gave the December examinations to twenty-three candidates, none of whom seems to have had the requisite qualifications to take them. The evidence developed the fact that some of the applicants paid or "contributed" to the "Society" four hundred dollars or more, which was immediately subject to Reddick's control. Dr. Chepko, who was the president of the Society, became disturbed and alarmed, and notified the Attorney General that Reddick had given these examinations. Reddick as Secretary, acting on the alleged authority of a fraudulent constitution and by-laws of the Society (which will be mentioned below), and as a reprisal, purported to remove Dr. Chepko as president of the Society and as a member of the Board. Upon the advice of the Attorney General, Dr. Chepko refused to acknowledge this action of Reddick as valid. Reddick, still acting alone, purported to make Dr. Virkutis, his subordinate on the staff of the Eastern Shore State Hospital, a member and president of the Board, and got Virkutis to *sign 35 to 45 blank licenses* to practice medicine. Shortly thereafter, without calling a Board meeting, Reddick issued six licenses to practice medicine in this State, presumably from those which were signed in blank. Dr. Chepko then called a meeting of the Board at which Reddick was removed as its Secretary-Treasurer. The Board also authorized the Attorney General to bring action in Dorchester County to require Reddick to give up the Board's books and records.

On April 8, 1956, there was held what purported to be the 81st annual meeting of the Society, apparently at the instigation of Reddick. The minutes show that 30 persons were present, but only five residents of Maryland attended in person, and two other such residents were present by proxy. All of the others were non-residents. Every one of the applicants who had taken the December examinations was present in person or by proxy, and every motion

at the meeting was made and seconded by one of such applicants. At this meeting, the action of Reddick in attempting to expel Chepko was purportedly ratified, and Drs. Swartwout, Watson, Simon and Follweiler purportedly were expelled, and four new men named to be on the Board of Medical Examiners in their places, namely, Drs. Jiminez, Brown, Hughes and Virkutis.

On May 31, 1956, during the litigation in Dorchester County, Reddick resigned as Secretary-Treasurer of the Board and of the Society. Two days thereafter, according to Reddick, a special meeting of the Society was purportedly held, although no notice was given to the membership as required by the By-Laws. It was attended by only five persons besides Reddick, who was the only Maryland resident there. He claims the meeting reinstated him to the offices previously held by him. It is very doubtful that this meeting ever was held. On June 1956, Dr. Chepko's board met and invalidated the December examinations, and elected Dr. Simon to fill the vacancy in the office of Secretary-Treasurer created by Reddick's dismissal and resignation. Reddick continued to issue the licenses to practice medicine, and, in the latter part of June, 1956, when these suits were filed, was conducting examinations for fifty-nine applicants, few, if any, being qualified to take such examinations in Maryland.

There was offered by the appellee, Exhibit 18A, which purported to be the real Constitution and By-Laws of the Society, and Reddick, likewise, introduced a purported Constitution and By-Laws, that delegated to him almost regal powers. Of this last instrument, Judge Byrnes said it is "a palpably fraudulent document"; and of Reddick's testimony, he stated it is "unworthy of belief in general". With these findings of the Chancellor, we are in complete accord.

I.

As a result of the above events, there were two boards of medical examiners, each claiming to represent the Society. The first board, sanctioned by the Attorney General, had its origin in the 79th annual meeting of the Society. As of

the date of the filing of these suits, its membership, after allowance for resignations, allegedly consisted of Drs. Simon, Follweiler, Harrison, Watson and Chepko. The claim of this group (Chepko's board) to be the legal board rests upon the validity of the actions taken at the 79th annual meeting, and the invalidity of the actions of Reddick and the purported actions of the 81st annual meeting. The second board (Reddick's board), on the other hand, rests its claim that it constitutes the legal board upon the validity of the 81st annual meeting, and some supposed action taken at a purported meeting on June 2, 1956.

The Chancellor decided that Dr. Chepko's board was the legally constituted Board. Appellant makes no contention that the 79th annual meeting of the Society was improper or illegal in any manner. As a matter of fact, it was at this meeting he was elected Secretary-Treasurer of the Society and a member of the Board. There, likewise, seems to be no dispute over those who were selected at this meeting as members of the Board, namely, Drs. Swartwout, Reddick, Chepko, Croissant, Harrison, Watson, Shamer (Shamer resigned shortly thereafter, and his place was filled by Dr. Follweiler) and Simon. The statute, Art. 43, Sec. 118, provides that the Board shall be selected at the annual meetings of the Society; and that each member shall serve for four years, or until his successor is appointed and qualified. Consequently, those elected to the Board at the 79th annual meeting held on May 23, 1954, and who have not resigned or who have not legally been removed, are still members of the Board. The members of the Society had no authority to vary this provision of the statute in regard to the length of the term of office of the Board members.

Further, the purported 81st annual meeting of the Society held on April 8, 1956, and the purported meeting thereof held on June 2, 1956, were not called at the request of the duly constituted authority of the Society, nor were notices given in accordance with the By-Laws; therefore, insofar as any action taken at either of these meetings attempts to affect the Society or the Board, such action is a nullity. Without hesitation, we confirm the ruling of the Chancellor that Dr. Chepko's Board is the legally constituted Board.

II.

The appellant contends that the Chancellor erred when he refused to allow the witness, Hough, to play the transcriptions of instruction in medicine at Fremont College, one of the schools that had graduated some of the applicants who had taken, and were taking, the examinations sponsored by Reddick. Whether the study of medicine was properly and competently conducted at this college was irrelevant. Neither the relief requested nor that granted raised this issue. We hold the Chancellor was correct in this ruling.

III.

The appellant further contends the Attorney General was not a proper party to this suit and had no authority to institute the same. Art. V, Sec. 3 of the Maryland Constitution reads, in part, as follows:

> "It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, * * * and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended * * *."

When the suits were filed, the Attorney General had no directive from the Governor or the Assembly to commence or prosecute the same; but, shortly thereafter, he received a written directive from the Governor to prosecute the "cases to conclusion". The appellee claims, (1) that as the Attorney General of the State, he has the right and the duty to institute and prosecute all proper suits for and on behalf of the State, without any request from the Governor or the Assembly, that the above section of the Constitution does not limit his powers, but compels him to commence, prosecute or defend actions when directed to do so by the Governor or the Assembly; and, (2) that if he be wrong as to (1), he had the right and the duty to prosecute the suits after obtaining the above mentioned directive of the Gov-

ernor. We find it unnecessary to rule upon (1) as we agree with (2). If we assume without deciding that the Attorney General had no authority to commence the actions without the Governor's or the Assembly's command, we think the Governor's subsequent written directive to prosecute the suits was a sufficient confirmation and ratification of the Attorney General's action in instituting the suits; and, together, they constituted a compliance with said Sec. 3 of Art. 5 of the Maryland Constitution. We, therefore, hold the State of Maryland, upon the relation of the Attorney General, was properly a party in both of the suits.

IV.

The appellant next contends that the second suit, the one against the Society, was based on the allegation that the Society was conducting the examinations instead of the Board, and there was no proof of this allegation. We find no merit in this contention.

The only defendant below, involved in this appeal, is Reddick. He was enjoined from acting as an officer of the Society "to give examinations allegedly qualifying persons to practice medicine" in Maryland; from continuing to conduct any such examination; and, from acting to affix the Society's Seal to any license to practice "medicine and surgery" in this State. In this Court's opinion, Reddick's conduct was reprehensible in the extreme. The evidence establishes, beyond doul , a fixed, determined and inexorable disposition on his part to give the examinations under any guise or pretext whatsoever; that he had planned and was conducting the June examinations with the idea of making it impossible for legal process to reach members of his purported board; and, that he (Reddick) had attempted to place the handling of these examinations under the control of three December examinees, all non-residents of the State, but purported members and/or officers of the Society, although not members of Reddick's purported Board. It was these same three who were supposed to have marked the examinations. And the sheriff's office representatives, when they attempted to serve process in the first suit, were ad-

vised that the meeting where the examinations were being conducted was a private meeting and not a Board meeting. Without laboring the point further, we think there was ample evidence in this suit upon which to enjoin Reddick in the manner indicated above.

V.

The appellant's final claim of error is that necessary parties to the proceedings were not joined. He first contends that in the suit against the Board, a declaration was prayed to establish Dr. Chepko's Board as the valid and subsisting Board of Medical Examiners; so, if the defendants below had been successful, and had been declared the legitimate Board, the members of Dr. Chepko's Board would have had their rights affected and adjudicated, and, therefore were necessary parties, and his demurrer should have been sustained. Sec. 11 of the Declaratory Judgments Act (Art. 31A) provides, in part: "* * * all persons shall be made parties who have or claim any interest which would be affected by the declaration, * * *"; and the general rule, in equity, is that all persons should be made parties who are legally or beneficially interested in the suit. *U. Slate Wkrs. v. Carpenters, etc.*, 185 Md. 32, 36, 37; *Md. Natur. Ass'n. v. Kloman*, 191 Md. 626, 628-632; *Ashman v. Schechter*, 196 Md. 168, 173; *Givner v. Cohen*, 208 Md. 23, 31, 32; Cf. *Kilroy v. O'Connor*, 85 N. E. 2d 441. If we assume, without deciding, the members of Dr. Chepko's Board were necessary parties, we think any ruling thereon has been cured. The object of the rule that requires all necessary parties to be joined is to be sure that no one's rights are adjudicated unless he has had his "day in Court"; and that there will be a complete determination of the matters in dispute in one suit (this latter being subject to certain exceptions not here pertinent). All of the membership of Dr. Chepko's Board testified in the present case. They were fully aware that it was being conducted, and what was involved therein. There is a well established principle of law that a person who has full knowledge of pending litigation and that it affects, and will determine, his rights, and, who is entitled to appear, but who makes no effort to

intervene as a party, and permits a conclusion thereof without objection, such person is concluded by the proceedings as effectually as if he were named on the record. *Albert v. Hamilton*, 76 Md. 304, 311; *Rody v. Doyle*, 181 Md. 195, 200; Cf. these, *Parr v. State*, 71 Md. 220, 235; *Riley v. First Nat'l. Bk.*, 81 Md. 14, 26, 27, 28; *Lichtenberg v. Sachs*, 200 Md. 145, 159. As we think the members of Dr. Chepko's Board are bound by the decree passed, we hold there was no reversible error in overruling the demurrer in the suit against the Board.

The appellant next claims that the bill against the Society requested a declaration that examinations given by the Society for licensure of any person to practice medicine were invalid. He contends this meant that certain licenses would be invalidated, so these license holders should have been made parties. He further claims that the Chancellor failed to require them to be made parties over his protest. The record does not seem to bear out this contention. The bill against the Society referred only to examinations that were to be given on June 25th, 26th and 27th and were *then in progress*. No licenses were alleged to have been issued, and the suit was in anticipation of preventing any such issuance. When the demurrer to said bill was filed by the appellant and when heard by the Chancellor, the only claimed improper party was the Attorney General; and the situation was the same when the appellant made a motion to dismiss just prior to the taking of testimony. We are unable to say from the record, that this question was raised and passed upon by the Chancellor, therefore, under former Rule 9, we are not at liberty to consider the same.

This disposes of all of the contentions of the appellant, but it is noteworthy that the Chancellor, in his opinion, made certain findings of fact and conclusions of law. These findings of fact and conclusions of law were repeated, as recitals, in the decrees themselves. The decree of a court of equity, and not its opinion, is the instrument through which it acts in granting relief. *Alleghany Corp. v. Alde. Corp.*, 173 Md. 472, 478. It is not necessary that a declaratory judgment be in any particular form, as long as the

Court, *by its decree*, actually passes upon or adjudges the issues raised by the pleadings. *Carter et ux. v. Nance, et ux.* (Ky.), 200 S. W. 2d 457, 459. And, in this regard, a finding of fact by the Court, unless it be included in the decree, is not the decree of the Court. *Employers Ins. Co. v. Brooks* (Ala.), 33 So. 2d 3, 5; *Alleghany Corp. v. Alde. Corp., supra*, p. 480 of 173 Md.

This opinion is specifically rendered without prejudice to the rights or obligations of the so called "Reddick licensees".

DECREES AFFIRMED, WITH COSTS.

Curricula As Taught At Western Medical College, San Francisco, California. Taken from Record Extract of Appellant in Court of Appeals below, pages 505, 506, 507, 508, 509, 510, and 511:

By Mr. Ramsey:

Q. Attached to the letter which I have just read is "Curricula as taught at Western Medical College", is it not? A. Mr. Ramsey, did you tear this from some other paper?

(Mr. Ramsey) It was in your file that way. I did not tear it.

(The Witness) I am most happy to have that information. This document is so entitled.

By Mr. Ramsey:

Q. Does anything on that curricula show the teaching of Homeopathy at Western Medical College? A. As you no doubt know, I also had occasion to ask precisely that question and, in reply to that question, Dr. Irving C. Gobar, of the faculty of Western Medical College, was good enough to send me a total of eight letters signed by him, and explaining precisely and in some detail, and with unquestioned validity, the teaching of Homeopathy, Homeopathic medicine and related subjects, at the Western Medical College. I would be happy to have you introduce said letter, if you will be so glad to have that letter.

Q. Does that schedule show any teaching of Homeopathy at Western? A. Mr. Ramsey, the three-subject division here indicates Pharmacology, Materia Medica and Toxicology, and the School of Medical thought represented by such, is the prerogative of the professor, the lecturer, the instructors giving the course. They can, at their discretion, confine it to Homeopathy or Allopathy, or both, by some other school of medical thought. It depends upon the director of said course.

Q. Your answer is, it is included in the course if the professor wishes to put it under pharmacy? A. No, I said specified instructions under Homeopathic directors, and the specified instruction under Homeopathy — Materia Medica and the like — are very often included in the subjects which appear to be detailed, and the division, such as Pharmacology, Materia Medica and Toxicology, and also, Mr. Ramsey, the subjects here entitled — General Medicine, Internal Medicine, Preventive Medicine and Hygiene, Pediatrics — as a matter of fact, most every subject listed here when taught in a Homeopathic Medical College, Mr. Ramsey, can be given its Homeopathic aspects. In other words, the Homeopathic aspects of each and every one of these subjects can be included in the curricula at the discretion of the authorized faculty member.

Q. There is no specific course in Homeopathy taught at Western, nor has there ever been, is that correct? A. If you will be so kind as to permit me to see the letter signed by Dr. Gobar, I will be most most happy to answer your question, Mr. Ramsey.

(Mr. Ramsey) I would like to offer this schedule, and read in what they did teach.

(Note: Thereupon said paper, headed "Curricula as Taught at Western Medical College", above referred to, was here admitted in evidence, and marked Complainant's Exhibit 63.)

(Note) Thereupon Mr. Ramsey read said Exhibit as follows:

CURRICULA AS TAUGHT AT WESTERN MEDICAL COLLEGE

Subject	*Hours*
Biochemistry	176
Pathology, Bacteriology and Immunology	176
Pharmacology, Materia Medica and Toxicology	176
Preventive Medicine and Hygiene	66
Internal Medicine	44
General Medicine	220
Neurology and Psychiatry	44
Pediatrics	44
Dermatology and Syphilology	44
General Surgery	165
Orthopedic Surgery	33
Chest Surgery	11
Urology	22
Ophtholmology	11
Otorhinolaryngology	22
Roentgenology	22
Minor Surgery	33
Proctology	22
Anesthesiology	33
Obstetrics and Gynecology	132
Introduction to Surgery	33
Operative Technique, including Surgical Pathology	88
Neurosurgery	11
Pelvic Surgery	44
Surgical Anatomy	88
American Institutions	11
Electives	231
Dentistry	11
Tropical Medicine	11
TOTAL HOURS	2024

By Mr. Ramsey:

Q. What did Gobar say in his letter about the teaching of Homeopathy at Western? I will let you read it. A. Thank you, it will be a pleasure.

Q. I am asking for the specific portion of the letter wherein he refers to Homeopathic instruction. A. I will ask you for your kind permission to not read out of context, too.

(Mr. Ramsey) I will introduce it, and let you read it.

* * * * * *

(St. Tr. 1142-1146):

(The Witness) This is on the stationery of Western Medical College, as follows:

WESTERN MEDICAL COLLEGE
1450 Post Street
San Francisco 9, Calif.

February 8, 1956.

Board of Medical Examiners of
The State of Maryland
Representing the Maryland State
Homeopathic Medical Society
c/o Robert H. Reddick, M.D.
Eastern Shore State Hospital
Cambridge, Maryland.

Gentlemen:

It has come to my attention that there is a certain misconception prevalent concerning the background and education of the graduates of Western Medical College, of which I am the president. Certain graduates of this school have made application to your Board, and the following information is, therefore, of importance not only to them but to you and me.

The prerequisites for entrance into Western Medical College were:

Anatomy	485 hours
Histology	115 hours
Elementary chemistry and toxicology	200 hours
Physiology	300 hours
Elementary bacteriology	200 hours
Hygiene	100 hours
Pathology	250 hours
Diagnosis	500 hours
Physical medicine	500 hours
Gynecology	150 hours
Obstetrics	200 hours
TOTAL	3000 hours

These subjects were taken in duly incorporated colleges which were approved and supervised by the Board of Medical Examiners of the State of California.

The following is the curriculum which all graduates of Western Medical College fulfilled in attaining the degree Doctor of Medicine:

Biochemistry	176 hours
Pathology, Bacteriology and Immunology	176 hours
Pharmacology, Materia Medica and Toxicology	176 hours
Preventive Medicine and Hygiene	66 hours
Internal Medicine	44 hours
General Medicine	220 hours
Neurology and Psychiatry	44 hours
Pediatrics	44 hours
Dermatology and Syphilology	44 hours
General Surgery	165 hours
Orthopedic Surgery	33 hours
Chest Surgery	11 hours
Urology	22 hours

Ophtholmology	11 hours
Otorhinolaryngology	22 hours
Roentgenology	22 hours
Minor Surgery	33 hours
Proctology	22 hours
Anesthesiology	33 hours
Obstetrics and Gynecology	132 hours
Introduction to Surgery	33 hours
Operative Technique, including Surgical Pathology	88 hours
Neurosurgery	11 hours
Pelvic Surgery	44 hours
Surgical Anatomy	88 hours
American Institutions	11 hours
Electives	231 hours
Dentistry	11 hours
Tropical medicine	11 hours
TOTAL	2024 hours
GRAND TOTAL	5024 hours

I can personally attest to the fact that every graduate of Western Medical College attended every class for which he was given credit and that every subject was given by professors of the highest ability and integrity. A list of the faculty follows:

Wesley G. Irons, DD.A., A.B., M.A., M.S.
Hilario G. Marquez, A.B., L.M., Ph.D.
Robert L. Matteo, M.D.
Joseph B. Giovinco, M.D.
Irving C. Gobar, M.D., F.A.C.T.S.
Adolph Gottschalk, M.D.
Grover Harold MacLeod, D.D.S.
John J. Blach, Roentgenologist
Cyril Viadro, A.B., M.S., LL.B.
C. F. LeBlanc, A.S., cand. Ph.D., O.D.

It was my personal pleasure, as well as privilege, to conduct the classes in pharmacology and as a dedicated homeopath I took this opportunity to indoctrinate and provide homeopathic as well as allopathic instruction. In addition to their scholastic backgrounds, every student accepted at Western Medical College was screened for his previous professional integrity and ability. I may say that in my long experience I have never had the privilege of instructing a group whose learning abilities brought me greater satisfaction nor whose grades were higher.

It remains only to speak of the physical plant. Western Medical College enjoys the most modern buildings, completely equipped in the utmost detail. I need only mention such items as a modern surgical amphitheatre seating one hundred, chemistry and physics laboratory, a completely separate biochemistry laboratory with the equipment capable of (and currently used for) advanced biochemical research, and visual education equipment to affirm that our graduates have been deprived of nothing pertinent to the highest standards of medical education.

With your very busy schedules I can understand that it may have been easy to confuse these men with some other applicants whose backgrounds were not completely medical and whose activities were perhaps conducted on the "fringe" of the healing arts.

In this country the great science of homeopathy is today in danger because of the decreasing number of graduates and applicants to licensure. It is my sincere belief that every one of the applicants from our school to your board will become valuable members of the profession in your state and will support you in every way with intelligence and integrity. Should you desire any additional information I will be only too pleased to provide it.

Yours very truly,

WESTERN MEDICAL COLLEGE

/s/ IRVING C. GOBAR, M.D.

President."

ICG:aec

* * * * * *

Letter of Governor Theodore R. McKeldin, from Record Extract, page 479, in Court of Appeals of Maryland:

* * * * * *

(St. Tr. 1057-1058):

Q. Was there a letter sent to the Governor to which he replied on June 8, 1954? A. Yes, there was a letter sent to the Governor. The letter was authorized by the Society meeting which took place May 23, 1954. The purpose of the letter was to obtain the approval and concurrence of the Governor in the selection of members of the State Homeopathic Society to serve upon the Board of Medical Examiners representing said Society.

(Note) Thereupon, Mr. Pressman read as follows:

"Executive Department, Annapolis, Maryland.

"Theodore R. McKeldin, Governor. June 8, 1954.

"Robert H. Reddick, M.D., Secretary
"Maryland State Homeopathic Medical Society,
"Cambridge, Maryland.

"Dear Dr. Reddick:

"I have your letter of June 4th advising me of the selection of the Maryland State Homeopathic Medical Society for membership to the Board of Medical Examiners, made in accordance with the terms of the Annotated Code, which are quite agreeable to me.

"Wishing you and the entire Board every possible success during the coming year, I am

Sincerely yours,

THEODORE R. McKELDIN,
Governor."

Letter of Governor Theodore R. McKeldin, from Record Extract, pages 41-42 in the Court of Appeals of Maryland:

(Mr. Ramsey) I should like to read into the record one paragraph of the letter, from Complainant's Exhibit 1, letter dated July 17, 1956, headed "Executive Department,

Annapolis, Maryland, Theodore R. McKeldin, Governor, to Honorable C. Ferdinand Sybert, Attorney General of Maryland, 1201 Mathieson Building, Baltimore 2, Maryland. Dear General Sybert: You have advised me that action on behalf of the State of Maryland has been instituted by you against Robert H. Reddick, et al., constituting an alleged Board of Medical Examiners representing the Homeopathic Medical Society, by the State of Maryland in the Circuit Court of Baltimore City, and that a companion suit has been filed in the name of the State of Maryland against the Maryland State Homeopathic Medical Society. Will you please consider this my direction to you to continue the prosecution of these companion cases to conclusion."

CROSS EXAMINATION

Q. When did you first discuss this particular matter with Governor McKeldin? A. I personally discussed it with him the day before or, rather, the same date as the date of this letter.

Q. July 17, 1956? A. Yes.

Q. That was the first time? A. That I discussed it with him, personally.

Q. Did you request him to send such a letter? A. I suggested to him it would be advisable.

Q. Did you compose the letter? A. I did not, personally

Q. Someone in your office composed the letter? A. Yes.

Q. Did you have any discussion with the Governor previous to the filing of this case about this matter? A. I did not, personally. It is possible members of my staff did have.

(Mr. Pressman) We renew our objection for the reason there was no proper direction before the filing of the suit.

(The Court) Does not the word "prosecute" the suit take care of the situation? He has been authorized to proceed with the cases.

(Mr. Pressman) He was authorized after suit was filed. Our point is they had no authority to file.

(The Court) The objection is overruled.

(Examination concluded.)

Sec. 1. Trusts, etc. in restraint of trade illegal; exception of resale price agreements; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenances of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, etc. 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693.

Sec. 2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, Secs. 2, 26 Stat. 209.

Article 23, Declaration of Rights, Constitution of Maryland:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the Land."

Article 2, Section 9, of the Constitution of the State of Maryland:

> "He shall take care that the Laws are faithfully executed."

Article 5, Section 3, Constitution of the State of Maryland:

> "It shall be the duty of the Attorney-General to prosecute and defend on the part of the State all cases, which at the time of his appointment and qualification and which thereafter may be depending in the Court of Appeals, or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the General Assembly or either branch thereof, the Governor, the Comptroller, the Treasurer or any State's Attorney, on any

legal matter or subject depending before them, or either of them; and when required by the Governor or General Assembly, he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of this State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended, and he shall have and perform such other duties and shall appoint such number of deputies or assistants as the General Assembly may from time to time by law prescribe: And he shall receive for his services an annual salary of three thousand dollars, or such annual salary as the General Assembly may from time to time by law prescribe; but he shall not be entitled to receive any fees, perquisites or rewards whatever, in addition to the salary aforesaid, for the performance of any official duty; nor shall the Governor employ any additional Counsel, in any case whatever, unless authorized by the General Assembly."

Section 121, Article 43, of the Public General Laws of Maryland:

"121. All persons, except physicians who were practicing medicine in this State prior to the first day of January, 1898, who are now practicing medicine or surgery and can prove by affidavit that within one year of said date said physician had treated in his professional capacity at least twelve persons, who shall commence the practice of medicine or surgery in any of their branches after the eleventh day of April, 1902, shall make a written application for license to the president of either board of medical examiners which said applicant may elect, accompanied by satisfactory proof that the applicant is more than twenty-one years of

age, is of good moral character and has received a diploma conferring the degree of doctor of medicine from some legally incorporated medical college in the United States or some foreign country; said diploma, if from a college in the United States, must have been conferred by a legally incorporated college having entrance requirements, standard of education, and requirements for graduation as defined by the Association of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy, respectively; and if from a college in a foreign country, the entrance requirements, standard of education, and requirements for graduation shall be equivalent to the standard defined by the Assocation of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy, respectively, provided, that this requirement shall not apply to any physician who shall, prior to the eleventh day of April, 1902, have practiced outside of this State for at least three years, and who shall have been duly registered or licensed in the place where he has so practiced; provided also, that in the case of students who, on April 11, 1902, shall be in their second year in a medical college, a three year's course of study, or attendance on three courses of lectures delivered in different years, shall satisfy said requirements. *Proof of the qualification of applicants* as above shall, *if required*, be made by affidavits at the time of the making of said application and payment of fee as provided. The president of the board to whom such application shall have been made, if satisfied with the same, shall direct the secretary-treasurer thereof to issue to said applicant an order for examination, and when said applicant shall have passed an examination as to proficiency satisfactory to said board the president thereof shall grant to such applicant a license to practice medicine and surgery in the State of Maryland. If the president of either board of medical examiners shall have refused any application, either for want of the *qualifications necessary to entitle such applicant to an examination, as herein-*

before provided, or for want of proficiency of such applicant upon being subjected to an examination, then the president of neither of said boards shall entertain or pass upon a subsequent application from said applicant until after the expiration of six months from the rejection of said previous application. The respective boards are authorized to license without examination applicants who present proper certificates of proficiency and professional standing at the time of application issued by the National Board of Medical Examiners *or boards of medical examiners of the District of Columbia and of other States*, the requirements of which are of as high a standard as those governing the boards of medical examiners of this State; provided such boards of such States or District grant the same privileges to licentiates of the examining boards of Maryland; such applicants, however, from the National Board and the District of Columbia and other States still being required to furnish the same proof of qualifications required of other applicants by this section. Either examining board may, in its discretion, grant a license upon a special examination to a physician or surgeon from another State, the District of Columbia, or a foreign country, provided the applicant has met all the preliminary and professional qualifications required for obtaining a license by examination in this State, has been in reputable practice for a period of ten years, and has reached a position of conceded eminence and authority in his profession. Medical students, at the end of their second year of study, who have, as verified by the certificate of the dean of the college which they have attended, completed the studies of *anatomy*, *physiology*, and medical chemistry in said college, shall on application be examined in such studies by the State licensing board, the result of said examination to be considered as part of the final examination, *the full regular fee to be paid at this time, no part thereof to be returned*, but placed to their credit for the remainder of the examination yet to be taken. Medical students who have as verified by the certificate of the dean of

the college which they have attended, completed a full four years' course of studies and lectures, but who have not yet received their diplomas, shall upon application be examined in all the branches enumerated in Section 120 of this Article by the State licensing board, the final certificate and license of the said board being withheld until the diploma of the proper medical college, with the candidate's name inscribed, be produced to the secretary of the board."

Office - Supreme Court, U.S.
FILED
AUG 19 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 300

ROBERT H. REDDICK, M.D.,
Petitioner,

vs.

STATE OF MARYLAND, EX REL. C. FERDINAND SYBERT, ATTORNEY GENERAL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

C. FERDINAND SYBERT,
Attorney General,

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OPINION BELOW

The Opinion of the Court of Appeals of Maryland appears in full on pages 27-37 of the Appendix to the Petition for Certiorari, and appears in 213 Md. 18, 130 A. 2d 762.

JURISDICTION

The jurisdictional statement contained in the Petition is accepted by the Respondent.

QUESTIONS PRESENTED

It is believed by the Respondent that the following questions clarify the vague questions presented by the Petitioner:

1. Was the decision below, finding that the Petitioner and others were acting illegally, clearly correct?

2. Did the activities of the Attorney General of Maryland in attempting to uphold the law of his State constitute an unlawful interference with the rights of its sister States?

3. Did the activities of the Attorney General of Maryland as approved by the Court of Appeals "generate a condition which borders upon a monopoly in violation of the Sherman Anti-Trust Laws"?

4. Was the State of Maryland, upon the relation of the Attorney General, a proper party?

STATUTES INVOLVED

Statutes are set forth in the Petition for Writ of Certiorari.

STATEMENT

The practice of medicine in Maryland was regulated, so far as licensing was concerned, by two separate Boards of Medical Examiners. One of the Boards represented the Medical and Chirurgical Faculty of the State of Maryland and the other represented the Homeopathic Medical Society of the State of Maryland. However, effective June 1, 1957, the Board representing the Homeopathic Medical Society was abolished and there now is only one Board which licenses both allopathic and homeopathic physicians.

Chapter 29, Acts of 1957 of the General Assembly of the State of Maryland.

Since we are here interested in the defunct Homeopathic Board, references herein to the "Board" will be to the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society, and references to the "Society" will be to the Maryland State Homeopathic Medical Society. The Board consisted of eight members who were selected by the Society, and each member was to serve for four years or until his successor was appointed and qualified. Throughout the years, minute books of the Society and of the Board indicate that very many homeopathic physicians were examined and licensed. Dr. John Evans of Baltimore, a well-known homeopathic physician, was for many years prior to 1950 Secretary of the Society. Upon his death in 1951, the Homeopathic Society fell into a state of disuse. There is no record of any meeting after the one held on May 10, 1950, until May 23, 1954, when the Society met for its 79th Annual Meeting (R. 221-222). The Petitioner Reddick appears to have been one of the prime movers behind the calling of this meeting, and in the course of it was elected as the Secretary of the Society and as a member of the Board of Medical Examiners. According to the formal minutes of the meeting prepared by Reddick, Doctors Croissant, Follweiler, Harrison, Simon, Swartwout, Watson and Chepko were also elected to the Board for terms ranging from two years to five years, although the law directed that the Board members be elected for terms of four years (R. 214).

The Board scheduled examinations for *"qualified"* applicants for licensure from December 12th through the 14th of 1955. In the meantime, Reddick, the Petitioner in this case, had shown an inordinate interest in establishing the qualifications of the "graduates" of two schools, Fre-

mont College and Western Medical College, for the taking of the examination. He persisted in this even though he was advised by competent authority that neither of these schools was accredited by any authoritative body and that their graduates would not lawfully qualify for the examination (R. 58). He proceeded without the knowledge or consent of the other Board members to give the December examinations to 23 applicants, 11 from Fremont, 7 from Western and the remainder from other institutions of a similar nature (R. 46). None of the applicants was qualified either as a matter of fact or under Maryland law to take the examination. Dr. Chepko, who was President of the Board, became disturbed over Reddick's actions and brought the matter to the attention of the Attorney General of Maryland (R. 56-58). Subsequently, Reddick purported in reprisal to remove Dr. Chepko as President of the Society and as a member of the Board, although he was without any authority to do so. Dr. Chepko, on the advice of the Attorney General, refused to accept Reddick's action as valid (R. 70).

Reddick then without authority purported to set up his own Board and made Dr. Simon Virkutis President of his Board and got him to sign a large number of medical licenses in blank (R. 167). Dr. Virkutis was unaware of Reddick's intention with respect to these licenses or the illegality of Virkutis' assuming to act as a member or President of the Board. Dr. Virkutis was also a subordinate of Petitioner Reddick on the staff of the Eastern Shore State Hospital, which partly explained the acts of Virkutis. On March 15, 1956, Reddick, acting on his own initiative and without even calling a Board meeting, issued six illegal licenses to practice medicine in the State of Maryland, five of them to persons who had taken the December examina-

tion, even though these examination papers had not as yet been graded.

A meeting of the Board of Medical Examiners was called by Dr. Chepko on April 4, 1956, and was attended by Doctors Chepko, Watson, Follweiler, Simon and Swartwout (R. 73). The last named, who had previously tendered his resignation, did not vote. At this meeting the Board removed Reddick as Secretary-Treasurer and appointed Dr. Simon in his place. It also authorized the Attorney General to bring an action to compel Reddick to turn over to the Board all books and records. Such an action was begun in the Circuit Court for Dorchester County, Maryland, on April 5, 1956 (R. 78).

On April 8, 1956, there was held what was alleged to be the 81st Annual Meeting of the Society at Reddick's call. The minutes show that 30 persons were present, but only 5 residents of Maryland attended in person and 2 other residents were present by proxy. All the others were non-residents (R. 436). Every one of the applicants who illegally took the December examinations was present in person or by proxy, and every motion at the meeting was made and seconded by one of such applicants. At the meeting the action of Reddick in expelling Chepko was ratified. This motion to ratify was moved and seconded by December examinees (E. 247). The meeting also purported to expel Doctors Swartwout, Watson, Simon and Follweiler. This motion was also made by a December examinee and seconded by a December examinee (E. 247). It should be noted that each of these were punitive actions against Board members who had refused to accept the qualifications of the very December examinees who purported to ratify Reddick's action in dismissing those Board members.

With regard to this meeting, it should be noted that Reddick introduced at the trial a copy of a Constitution and By-Laws that delegated to him almost regal powers. It was obvious that it was a fraudulent document and the lower court so found, with the Court of Appeals in complete accord (Petition, page 31). The State of Maryland introduced the valid Constitution which required, among other things, that members be residents of Maryland, that notice be given for meetings, and that seven members were necessary for a quorum. It also established procedure for revoking membership. The valid Constitution did not provided for attendance at meetings by proxy as did Reddick's fraudulent Constitution.

At the April 8, 1956, meeting there were allegedly elected to the illegal Board of Medical Examiners Doctors Jiminez, Brown, Hughes, Virkutis, Mozzer and Yuan, with Harrison and Reddick remaining on the Board as holdover members (R. 250). The meeting also assessed "every member licensed by the Maryland State Homeopathic Board of Medical Examiners after January 1, 1952 * * * the sum of $500.00 for the establishment of a 'fund for the protection and maintenance of homeopathy.' ", and the fund was subject to disbursement at the discretion of Dr. Reddick (R. 252).

Subsequently, on May 4th, 30th and 31st, 1956, hearings were held in the suit filed against Reddick in Dorchester County, Maryland. These hearings ended on May 31st, when Reddick resigned as Secretary-Treasurer of the Society and of the Board, and also as a member of the Board (R. 89-91). Every person present at that time, except Reddick, affirmed that he then and there orally agreed that he would not thereafter "seek or accept" office on the Board or in the Society (R. 91).

Part of the records of the Board were delivered to Dr. Simon in accordance with the stipulation entered into in

the Dorchester County case. On June 4, 1956, a meeting of the legal Board was held in the offices of the Attorney General in Baltimore, at which there were present Doctors Chepko, Harrison and Watson. (These three constituted a quorum, as the legal Board had only five members at that time.) At this meeting the December examinations were invalidated by the Board and Dr. Simon was elected to fill Reddick's unexpired term as a member and as Secretary-Treasurer (R. 95).

Reddick, however, contended that he held a Society meeting on June 2, 1956, at the Emerson Hotel in Baltimore. This Society meeting was, according to Reddick's testimony, attended by himself, Ahlers, Patterson, Boff, Cardillo and Royson (R. 443, 462). It will be noted that Patterson, Boff, Cardillo and Royson are all December examinees and non-residents of Maryland. Reddick also claimed that on June 5, 1956, he allegedly held a meeting of his Board (R. 454). At this meeting, so far as the testimony shows, only Reddick was present. Reddick alleges that he was re-elected Secretary-Treaurer. On June 25, 1956, Reddick, illegally purporting to act for and on behalf of the Board, proceeded to hold examinations for applicants to practice medicine in the State of Maryland. There were 59 such applicants who took the examination and not a single one of them seems to have been qualified on the basis of his application to take such examination under the laws of Maryland. All of them were non-residents of Maryland, and virtually all of them had presumably attended schools, if in fact they had attended any school, which were not accredited as required by Maryland law.

When knowledge of the holding of the examination reached the Attorney General of Maryland on June 26, 1956, he immediately filed a suit for declaratory judgment

and injunction against Reddick's illegal Board to enjoin it from acting as the Board of Medical Examiners representing the Society and from conducting examinations and issuing licenses. A companion suit against those purporting to act as officers of the Society was filed on June 28, 1956, seeking similar relief.

Preliminary restraining orders issued by a judge in Baltimore City were served on Reddick on June 29, 1956, at about 11:00 o'clock A. M. According to Reddick, however, prior to that time the examination papers or booklets had been marked and graded and the "successful" candidates had been issued their illegal licenses. It should be noted, however, that Reddick stated that he did not hold a board meeting to approve licensure of examinees, but that he conferred at about 6:30 or 7:00 o'clock P. M. on June 28, 1956, with Robert H. Brown, the alleged President of the illegal Board concerning the licenses (R. 423).

The trial on the suit filed by the Attorney General was held from July 23rd to August 1st, 1956. Judge Joseph R. Byrnes of Baltimore City issued his opinion on August 13, 1956, and filed orders permanently enjoining the Petitioner and his associates from acting as the Board of Medical Examiners (Homeopathic) or on behalf of said Board. The Petitioner then appealed to the Court of Appeals of Maryland which affirmed the ruling of the lower court, and he is now requesting that this Court grant a writ of certiorari to the Court of Appeals of Maryland.

ARGUMENT

This is a further step of the Petitioner to prolong this matter as long as possible. The subject matter of the Petition was first heard by the Circuit Court for Baltimore City in a seven day trial and later affirmed by the Court of Ap-

peals of Maryland with costs, the costs not having been paid by the Petitioner up to the present time.

This case presents so limited an issue for consideration that it is obvious that review on certiorari by this Court is neither necessary, desirable nor warranted. The main effect of the decree below was to permanently enjoin the Petitioner and others from acting as the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society and from conducting examinations or issuing licenses to practice medicine. The Court found that the Chepko board was the proper board and that, therefore, Reddick must cease his illegal actions.

The Petitioner seeks to conceal the limited significance of the points raised by him in the Petition by phrasing the questions broadly.

The questions as presented in the Petition are vague and seem to try to raise Federal grounds which were not raised in the State court and which are not properly raised in this Court. Examination of the argument made in support of the alleged questions reveals, however, how narrow and lacking in merit or substance are the issues presented for this Court's consideration. The decision of the Court of Appeals of Maryland is so clearly correct and the protection afforded to the Petitioner's rights so broad in Maryland that no question warranting decision by this Court is presented.

I.

The Decision Below is Clearly Correct

The Petitioner would have this Court believe that his Board had some standing at law and therefore some standing in this Court. The Court of Appeals of Maryland, in

regard to the purported Constitution and By-Laws of the Society introduced into evidence by Reddick, agreed with the lower court in finding that it was "a palpably fraudulent document", and that the testimony of Reddick was "unworthy of belief in general". The Court found that Reddick had no authority to remove members of the Board and that the purported meetings held on April 8, 1956, and June 2, 1956, were not called at the request of the duly constituted authority of the Society. The Court further declared that notices were not given regarding the meetings in accordance with the valid By-Laws of the Society; therefore, actions taken at these meetings were invalid. It confirmed the lower court in finding that Chepko's Board was the legally constituted board. Therefore, Reddick's board was not duly selected and elected under the provisions of Article 43, Sections 116 and 118, of the Annotated Code of Maryland (1951 Ed.).

The lower court made the following findings of fact and permanently enjoined the Petitioner from acting as said Board:

> "1) The examinations given by Reddick on December 12, 13 and 14, 1955, were never authorized as to those applicants who took the examination;
>
> 2) The examination papers of those applicants who took the December 12-14 examination were never marked, graded or passed upon by the Board of Medical Examiners of the Maryland State Homeopathic Medical Society;
>
> 3) License Nos. 523 through 557, inclusive, and 561 through 611, inclusive, were issued without proper authorization of the Board of Medical Examiners of the Maryland State Homeopathic Medical Society. License Nos. 558, 559 and 560 have never been issued.

4) At the purported meeting of the Maryland State Homeopathic Medical Society, held on April 8, 1956, only five members who were residents of Maryland attended in person, and two other such residents attended by proxy;

5) The Constitution and By-Laws of the Maryland State Homeopathic Medical Society in force and effect on May 23, 1954, and at all times since that date to the date of the hearings in these cases were as set forth in the printed booklet attached to the minute book, bearing on its cover the year 1927, and introduced in evidence;

6) The Constitution and By-Laws offered in evidence and claimed by Reddick to be the true constitution and by-laws of the Society is a palpably fraudulent document;

7) The testimony of Reddick is unworthy of belief in general, and is worthy of belief only when it consisted of admissions against his interest or was corroborated by other credible evidence;

8) Reddick resignsd from the Board of Medical Examiners of the Maryland State Homeopathic Society and as Secretary-Treasurer of the Society itself on May 31, 1956, and has never been re-elected to either office;

9) Notice was not given to the members of the Society for supposed special meeting held on June 2, 1956, as required by the valid By-Laws of the Society; and

10) The examinations given by Reddick on June 25, 26 and 27, 1956, were never authorized, nor were the examination papers marked, graded or passed upon by the Board of Medical Examiners of the Maryland State Homeopathic Medical Society."

II.

The Activities of the Attorney General of Maryland to Uphold the Law of His State Did Not Interfere With the Rights of its Sister States.

The Attorney General of Maryland was upholding the laws of the State of Maryland in instituting the instant case. Section 121 of Article 43 of the Annotated Code of Maryland (1951 Ed.) stated that a person to be eligible for medical licensure in Maryland must have received a diploma from a school which has "entrance requirements, standard of education, and requirements as defined by the Association of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy." Petitioner disregarded this law entirely and issued purported medical licenses wholesale to those who were not and had not qualified under Maryland law. At the time the suit was filed Petitioner was not even a valid member of the Board of Medical Examiners.

The activities of the Attorney General of Maryland did not in any way interfere with the rights of its sister states, but rather served to clean up and end the illegal activities of the Petitioner Reddick.

III.

The Activities of the Attorney General of Maryland, as Approved by the Court of Appeals, are not in the Scope of the Anti-Trust Laws and no Federal Question is Presented.

Petitioner tries to show that the enjoining of the illegal acts of the Petitioner violates the Sherman Anti-Trust Laws. We suppose the Petitioner is trying to argue that the Maryland Medical Practice Act as interpreted and enforced by the courts of the State of Maryland violates the

provisions of Title 15 U. S. C. A., Secs. 1 through 27 and Sec. 44, in that it created a monopoly. Title 15 U. S. C. A., in fact, applies only to restraints placed upon interstate commerce by individuals, and does not apply to restraints, if there are any, upon commerce, which are entirely intrastate in natur..

In *Alabama Independent Service Station Asso., Inc. v. Shell Petroleum Corp.*, 28 Fed. Supp. 384, the Court held that the Federal Anti-Trust Acts only applied to acts which were in restraint of interstate commerce.

In *Parker v. Brown*, 317 U. S. 341, 87 L. Ed. 315, the State of California, by legislation, restricted the interstate movement of raisins from the grower to the packer. The question arose as to whether or not the restriction placed by the State on the movement of the raisins was a violation of the Sherman Anti-Trust Act. The Court at p. 350 of U. S. 317, said:

> "* * * We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally substract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.
>
> "The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. The Act is applicable to 'persons' including corporations (§7), and it authorizes suits under it by persons and corporations (§15). * * *"

In *United States v. E. C. Knight Co.*, 156 U. S. 1, 39 L. Ed. 325, the Court said:

"It cannot be denied that the power of a state to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion', is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each state from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the states to deal with, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by state legislative power. * * *"

The control by a State of the practice of medicine, by licensing within the State only those who are qualified to practice, is not a regulation of interstate commerce. It is a regulation only of commerce within the geographical boundaries of the State. The regulation of the licensing of qualified practitioners does not in any way create a monopoly. Anyone who is qualified to do so may take the examination and, upon successfully passing it, become a licensed practitioner in the State.

It is well established by the decision of the courts of the United States and of the courts of the States of the United States that the States may regulate those callings or professions which concern the public health, and that there is no violation of constitutional rights as long as they do not act unreasonably in doing so.

In the case of *Dent v. West Virginia*, 129 U. S. 114, 32 L. Ed. 623, the Court said:

> "Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified. * * * No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the State as competent to judge of his qualifications."

In *Barsky v. Board of Regents*, 347 U. S. 442, at 449, the Court said:

> "It is elemental that a State has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of the State's police power. The State's discretion in that field extends naturally to the regulation of all professions concerned with health."

In *Semler v. Oregon*, 294 U. S. 608, 79 L. Ed. 1086, the appellant challenged the constitutionality of an Oregon statute imposing restrictions on advertising by dentists. In overruling each contention of the appellant, Mr. Chief Justice Hughes, speaking for the Court, said:

> "We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards."

In *Graves v. Minnesota*, 272 U. S. 425, 71 L. Ed. 331, the State of Minnesota passed a statute prohibiting the practice of dentistry by persons who had not been licensed by a Board of Dental Examiners, and required that every applicant for a license show that he had been granted a diploma from a dental college of good standing. Graves had applied for a license but was refused an examination by the Board because he had no diploma from an accredited dental college. He attacked the constitutionality of the statute. The Court in that case said:

"It is well settled that a state may, consistently with the 14th Amendment, prescribe that only persons possessing the reasonably necessary qualifications of learning and skill shall practice medicine or dentistry. Dent v. West Virginia, 129 U. S. 114, 122, 32 L. ed. 623, 626, 9 Sup. Ct. Rep. 231; Douglas v. Noble, 261 U. S. 165, 167, 67 L. ed. 590, 592, 43 Sup. Ct. Rep. 303. * * *".

"* * * And the case is to be considered in the light of the principle that the state is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest. Great Northern R. Co. v. Minnesota, 246 U. S. 434, 439, 62 L. ed. 817, 819, 38 Sup. Ct. Rep. 346; Gitlow v. New York, 268 U. S. 652, 668, 69 L. ed. 1138, 1146, 45 Sup. Ct. Rep. 625. * * *".

In *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716, 95 L. Ed. 1317 at 1324, the Court said:

" 'The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life.' (U. S.) 4 Wall at 379, 380. See also Cummings v. Missouri, supra ((U. S. 4 Wall at 318, 319, 18 L. ed. 361, 362)). This doctrine was reaffirmed in Dent v. West Virginia, 129 U. S. 114, 32 L. ed. 623, 9 S. Ct. 231 (1889), in which Mr. Justice Field, who had written the Cummings and Garland opinions, wrote for a unanimous Court upholding a statute elevating standards of qualification to practice medicine. And in Hawker v. New York, 170 U. S. 189, 42 L. ed. 1002, 18 S. Ct. 573 (1898), the Court upheld a statute forbidding the practice of medicine by any person who had been convicted of a felony. Both Dent and Hawker distinguished the Cummings and Garland cases as inapplicable when the legislature establishes reasonable qualifications for a vocational pursuit with the neces-

sary effect of disqualifying some persons presently engaged in it."

See also *Watson v. Maryland*, 218 U. S. 173, 54 L. Ed. 987; *William v. Arkansas*, 217 U. S. 79, 54 L. Ed. 673; *Hawker v. United States*, 170 U. S. 189, 42 L. Ed. 1002.

Appeals in the recent cases involving medical acts of *Taylor v. Oklahoma*, 1 L. Ed. 2d 38; *Dantzler v. Callison*, 1 L. Ed. 2d 235; and *Hitchcock v. Collenberg*, 1 L. Ed. 2d 718; which were similar in nature, were dismissed without hearing.

IV.

The State of Maryland, Upon the Relation of the Attorney General, was a Proper Party.

The Petitioner contends that the Attorney General was not a proper party in the instant case. As a matter of fact, the State of Maryland is the party upon relation of the Attorney General. Article V, Section 3, of the Maryland Constitution states that the Attorney General had the duty to prosecute and defend on the part of the State all cases and he shall commence and prosecute or defend any suit which the General Assembly or the Governor shall direct to be commenced, prosecuted or defended.

The Court of Appeals of Maryland, in finding that the State of Maryland upon relation of the Attorney General was the proper party, said:

> "* * * The appellee claims, (1) that as the Attorney General of the State, he has the right and the duty to institute and prosecute all proper suits for and on behalf of the State, without any request from the Governor or the Assembly, that the above section of the Constitution does not limit his powers, but compels him to commence, prosecute, or defend actions when directed to do so by the Governor or the Assembly;

and, (2) that if he be wrong as to (1), he had the right and the duty to prosecute the suits after obtaining the above mentioned directive of the Governor. We find it unnecessary to rule upon (1) as we agree with (2). If we assume without deciding that the Attorney General had no authority to commence the actions without the Governor's or the Assembly's command, we think the Governor's subsequent written directive to prosecute the suits was a sufficient confirmation and ratification of the Attorney General's action in instituting the suits; and, together, they constituted a compliance with Section 3 of Article 5 of the Maryland Constitution. We, therefore, hold the State of Maryland, upon relation of the Attorney General, was properly a party in both of the suits."

Petitioner claims on page 9 of his Petition that the Court's decision violates the United States Constitution "expressly forbidding state governments from making *ex post facto* laws or laws impairing the obligation of contracts". Of course the prohibition in the Constitution against the passage of *ex post facto* laws applies exclusively to penal or criminal cases, and as to impairment of the obligation of contracts, there existed no contract which could have been impaired in this case. *Calder v. Bull*, 3 U. S. 386, 1 L. Ed. 648. Obviously, there is no substantial Federal question presented.

CONCLUSION

From what has been said heretofore, it is apparent that the Petitioner would have the Court believe that the injunction in this case has adversely affected the licensing of homeopathic physicians. The only effect was to permanently enjoin the Petitioner from engaging in his illegal licensing rampage and declare who constituted the valid Homeopathic Board. However, after this case was decided, the Maryland Legislature amended the Medical Practice

Act by abolishing the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society, and, effective June 1, 1957, there is only one Board of Medical Examiners which licenses both allopaths and homeopaths.

We respectfully submit that examination of the Petitioner's arguments and the position which he takes indicate that there is no Federal question involved; further, that the decision below turns upon its own facts and, indeed, the decision below is clearly correct. Therefore, this case is not the kind to be reviewed by the Court.

For the reasons assigned, the Petition heretofore filed with this Court for the issuance of a writ of certiorari should be denied.

Respectfully submitted,

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